

**The Virginia Indigent Defense Commission  
Policy and Procedure Committee Meeting  
1604 Santa Rosa Road  
Richmond, Virginia 23229  
May 12, 2011**

The meeting was called to order at 11:15 am by Committee Chair, David Walker. Other committee members in attendance were John Douglass, and Carmen Williams. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; Human Resources Director, Amy Williams; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first item on the agenda is to approve the meeting minutes from the previous meeting.

Mr. Douglass made a motion to approve the November 19, 2009 Policy and Procedure meeting minutes. Ms. Carmen Williams seconded the motion. The motion carried.

The next item on the agenda is teleworking.

Amy Williams reported that the Governor is reviewing every agency and where they are regarding telework policies. Our business is a little different in that most of our work is done in the courts, the office or at the jails. We looked at telework from a different perspective as we are transitioning to the Cloud and will be able to access computers from any Internet connection. The telework policy in part puts parameters on what was coming technologically. We had a teleconference with the Public Defenders to address the pros and cons of teleworking. This policy addresses teleworking from the prospective of working from an alternate location. Our business doesn't really lend itself to having a formal, permanent teleworking agreement in place for employees.

Mr. Johnson said that we were mandated to at least examine teleworking. It is not going to be a case of "I want to work at home today." It is for specific projects that will need to be done away from the office. We had to come up with parameters.

There was discussion regarding teleworking and that with the changes in technology we can telework but all employees are expected to be in the office due to the nature of our work. Information used and stored while teleworking will be stored on the Cloud and not the hard drive of a computer, therefore sensitive data will be protected.

Ms. Geiger said that employees are responsible to protect client confidentiality under the VSB guidelines. The employee is still on the hook under those rules if he or she loses the computer. It is the employees' responsibility to protect the information on the computer.

Amy Williams added that certain positions do not qualify to telework. The Public Defender or Executive Director, in the case of the Administrative Office, will approve other classifications to telework based on the business needs of the agency, position, and employee work performance considerations. There will be some accountability and an agreement to be signed by the employee. The employee will need to show the work that was done.

There was discussion regarding office managers and secretaries who are not eligible to telework. Our office managers are ineligible due to the critical office support nature of these positions and because they oversee the work of the secretaries and receptionists. In some offices the office manager is the only support staff.

Ms. Geiger said that this will be incorporated into the Policy Manual in Section 4.3.

Mr. Douglass moved that the Policy and Procedure committee recommend to the full Commission the approval of the teleworking policy as written. Ms. Carmen Williams seconded the motion. The motion carried.

The next order of business is the records retention policy.

Ms. Geiger reported that each year the Library of Virginia amends their guidelines to give more authority or direction about what they want as far as archiving and storing of the Commonwealth's public documents. Each year we review the Library's guidelines. The Commission has not reviewed the records retention policies for at least six years. The current one we have on file with the Library was filed in 2002. It looks like we have adopted what the statute requires for courts, ten years for misdemeanors and twenty years for felonies. Apparently we have not given the Library approval to shred or destroy the documents that have passed those time lines. There are a lot of files currently at the Library that have little or no value and there is no need to keep them. We open about 100,000 new case files per year on average. We are charged \$.27 per box each month for every box stored there.

We took a survey of all the public defender offices that resulted in opinions ranging from destroying misdemeanor files after three to five years to wanting to keep files forever. Some offices have never sent files to the Library and have boxes piled up in basements – one of which flooded a few years ago resulting in the destruction of files due to mold.

Ms. Geiger said that the Virginia State Bar (VSB) recommends not keeping the files forever but to use common sense and if destruction of the file will hurt the client's interests in any way it is a good idea to keep the file. It is very general. The American Bar Association (ABA) suggested that files be kept if there is any responsibility to the current case that would be damaged should the file be destroyed. The originals should be given to the client; the client is the owner of the file. Basically, it is to use our best judgment.

Mr. Johnson added that the desire to keep files indefinitely mostly came from the northern Virginia offices mainly because of immigration issues that arise.

There is no statute of limitations on Bar complaints. We looked at the Habeas statute which is five years. We went to five years on all complaints.

The reasons given by the Public Defender offices in the survey for retrieving documents were: probation violations, mental health issues and habeas, etc. The number of file retrievals annually is not high.

There was discussion about digitizing files. The problem with this is the entire file has to be digitized and that the information has to be brought forward as technology changes for as long as the file will be kept. Digitized formats change frequently so a file from ten years ago might not be retrievable because that type of formatting is obsolete.

Ms. Geiger said there is an IT project, ECM (Electronic Content Management). It is not getting as much attention as it should be getting state wide. They do a lot of document scanning for agencies and put the information in an electronic format for them. It is at a small level right now.

We talked about our case management system and web enabling it as well as expanding it to be able to enter all the data in that system. We are a couple steps away from being able to do that. It would require the attorneys to have laptops or some type of portable device to take to court with them.

Mr. Walker suggested writing a closing letter after every case. The closing letter would state that the lawyer's representation has ceased in this case and any documents the client needs should be addressed in the closing letter. The letter should also include that the documents will be in storage and eventually shredded or destroyed and if the client would like information after the determined time frame, they will need to get them from the clerk's office. The client should have all original documents.

There was discussion regarding the length of time to keep files and adopting a procedure to clarify a time line to store or destroy files.

File closure is generally after the trial or after the final appeal.

Currently we have a retention schedule filed with the Library indicating retention is ten years for misdemeanors and twenty years for felonies.

Mr. Johnson said that he wants the files out of the offices. There is a safety issue about storing them in the offices. The main provision in the proposed policy is that the files must be stored off site. The main question is whether the files need to be destroyed or stored at the Library of Virginia.

This policy is a small but important step to reduce the amount of documents being retained and to get them out of the offices. This is an effort to overcome the hoarding of files.

The procedure of retrieving a file from the Library of Virginia includes filling out a requisition form with the box number and bar code number. The library has a staff person find the box and then deliver it to us. When we're finished with the box we call the library and they send someone to pick it up. If we go over a certain number of retrievals per month there is a \$5 charge for each box.

We spend about \$30,000 per year for storage costs including inbound and outbound freight, retrieval fees, and manual labor.

Mr. Walker suggested that in all cases there will be a closing letter and this will be part of the records retention policy.

The proposal before the committee was reviewed. There are two categories of caseloads; misdemeanors and felonies and two time lines; (1) how long to keep files in the office, and (2) how long to store them in the Library.

Mr. Douglass made a motion to recommend to the full Commission the approval of the records retention policy as drafted with two provisos. (i) that staff draft and present an accompanying policy regarding a file closure letter; and (ii) the full Commission give considered judgment to the time periods outlined in this policy. Ms. Carmen Williams seconded the motion. The motion carried.

The next item on the agenda is the proposed general policy amendments.

Section 3.12 Outside Employment  
Page 34, Paragraph E. Liability  
Removed: as provided in Chapter 7.

Section 4.0 Standard Hours of Work  
Page 36

We clarified part time employment and exempt and non exempt employees. Exempt employees are not entitled to overtime or compensatory time for hours in excess of 40 hours per week.

Section 4.1 Inclement Weather and Emergency Closure Policy  
Page 37

Employees will only be charged for leave for those hours that the office is open instead of the full work day when there is a partial closing or postponement.

Section 5.0 Salaries  
Page 39  
Deleted Paragraph D, Service Supplement  
No longer in effect

Section 5.2 Pay Practice Program  
Page 40

We deleted the pay practice language because those funds are no longer available.

Section 6.1 Traditional Sick Leave  
Page 52  
Paragraph G. Disposition  
Deleted: Part time employees are ineligible.

Section 6.6 Annual Leave  
Page 58  
Deleted Paragraph D, Leave Sharing  
The hours expired and we eliminated the program, so we deleted the paragraph.

Section 9.0 Grievance Procedure  
Page 77

We found that some employees when filing a grievance also file an EEOC claim. The EEOC claim almost always mirrors the grievance. This change states that if the employee filed an EEOC claim after the employee filed a grievance, we would stop the grievance, merge it with the EEOC and pursue it under federal law. We do not follow the state grievance policy, we have our own parameters.

The employee would be waiving his or her rights under our grievance policy in lieu of us responding under the EEOC claim. This is what the Executive Branch has adopted. There was discussion about the grievance procedure.

Section 9.5 Management Review  
Page 82  
Paragraph A

The person against whom the allegations were filed receives a copy of the grievance and a chance to respond.

Paragraph B  
Changed Deputy Director to Human Resources Director

Page 83  
Changed Deputy Directory to Human Resources Director  
Deleted “determination cannot exceed the authority of the Executive Director and is final”

There was discussion about protecting the person filing the grievance until a decision has been reached and how to do that.

Section 10.4 Expenses authorized by Court Order  
Page 90

Only mileage greater than 200 will be requested from the Supreme Court when a state car is used and the required will be at fleet rate.

Section 10.11 Mileage  
Page 99

We revisited the mileage issue and restructured the layout of the policy. It is the same language as before but hopefully is a little more understandable.

We defined commuting mileage

We kept the short term trip vehicles, which will be Enterprise rental cars, and travel is to be the most direct practicable route.

There are certain rules to follow if using a personal vehicle

- 1) If you have a state car in your office and it is available, you must use it or you can choose to be reimbursed at fleet rate, which is half the full rate
- 2) If a rental car is more cost beneficial, it must be used.
- 3) If attending the same conference, employees must carpool, rent a car or receive fleet rate.

There is a state website to help calculate the most cost effective option.

Section 10.16 Telephone Calls and Facsimiles  
Page 105  
Remove the word “telegrams”

Chapter 11  
Section 11.0 Overview and General Provisions  
Page 107

Addresses the new revisions to the state IT Security Standard and the upcoming moves to Google email and online file storage

In paragraph C we deleted the language “during business hours” in an effort to limit the personal phone call usage after hours as well

We addressed the social networking, such as Face book

A SPAM email was sent as a VIDC Face book account. The recipient deleted the email, but made us aware of it.

Section 11.1 No Expectation of Privacy  
Page 108

The change in Paragraph A is needed for our move to the Cloud, which is not owned by us but will be leased by us.

Page 109

We have changed the name of our CAPP system to ACeS

Page 112

Because we are moving to Google email, we struck Lotus Notes.

Mr. Douglass made a motion to recommend that the full Commission approve the changes. Ms. Carmen Williams seconded the motion. The motion carried.

There was no further business.

Mr. Douglass moved to adjourn. Ms. Carmen Williams seconded the motion. The motion carried.

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director